

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS.  
BOSTON, MASSACHUSETTS.

FILED  
CLERKS OFFICE  
2005 FEB 28 P 1:39  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

IN THE MATTER OF  
ALEXANDER. A. OYENUGA  
Pro. Se. PETITIONER.

Vs.

JOHN ASHCROFT  
U.S. ATTORNEY GENERAL  
et. al.

RESPONDENTS.

CIVIL ACTION NUMBER

05-10170 - P.BS

AGENCY NUMBER.

A20-750-982.

TRAVERSE TO THE ANSWER

IN ORDER TO EXPLAIN WHY GOVERNMENT'S  
ANSWERS AND DEFENCES ARE NOT MERITORIOUS.

PETITIONER, ALEXANDER A. OYENUGA HEREBY FILE THIS RESPONSE TO THE GOVERNMENT'S MOTION TO DISMISS IN ORDER TO EXPLAIN WHY THE GOVERNMENT DEFENCES ARE NOT MERITORIOUS.

THIS RESPONSE IS BEING FILED PURSUANT TO RULE 56(C) OF THE FEDERAL RULE OF CIVIL PROCEDURE. 28 U.S.C § 2242 (1994) OF THE JUDICIAL CODE PROVIDES THAT HABEAS CORPUS APPLICATIONS "MAY BE AMENDED OR SUPPLEMENTED AS PROVIDED IN THESE RULES OF PROCEDURES APPLICABLE TO CIVIL ACTIONS.

AS IN ANY CIVIL ACTION, THE RESPONDENT MAY OPPOSE A CLAIM IN THE PETITION ON ANY OF THE FOLLOWING "3" GROUNDS.

1) THE FACTS ALLEGED BY THE PETITIONER IN SUPPORT OF A CLAIM ARE UNTRUE.

2) REGARDLESS OF THE TRUTH OF THE

PETITIONER'S FACTUAL ALLEGATION, THE CLAIM IS INSUPPORTABLE AS A MATTER OF LAW OR IS NOT LEGALLY COGNIZABLE IN FEDERAL PROCEEDINGS, INCLUDING BECAUSE THE PETITIONER IS NOT IN CUSTODY OR REGARDLESS OF THE FACTUAL OR LEGAL VIABILITY

OF THE PETITIONER'S CLAIM, SOME DEFENSE BARS RELIEF. PETITIONER RESPECTFULLY REQUESTS OF THIS HONORABLE COURT TO EXPLORE ALTERNATIVES TO DISMISSAL — INCLUDING IF IT PREFERENCES, ONE SHORT OF A FULL BLOWN EVIDENTIARY HEARING. SUCH AS PRODUCTION OF THE STATE COURT RECORD, EXPANSION OF THE EXISTING RECORD WITH NEW MATERIALS. IF THE GOVERNMENT DISPUTES ALLEGATIONS CREATING A GENUINE ISSUE AS TO [a] MATERIAL FACT, THE DISMISSAL IS APPROPRIATE. IF THAT IS THE CASE IN THIS MATTER, PETITIONER HEREBY SEEKS THE COURT'S AUTHORITY TO AUTHORIZE PROCEDURES TO RESOLVE THE FACTUAL ISSUES.

SINCE THE 1ST CIR. IN VASQUEZ REASONED THAT "BECAUSE THERE IS NO PRINCIPLED DISTINCTION BETWEEN AN ALIEN HELD IN A DETENTION FACILITY AWAITING POSSIBLE DEPORTATION AND A PRISONER HELD IN A CORRECTIONAL FACILITY AWAITING TRIAL OR SERVING A SENTENCE; IT WILL BE LOGICAL TO APPLY THE RULES GOVERNING § 2254 CASES.

IF THE PETITIONER, ALTHOUGH "IN CUSTODY" FOR HABEAS CORPUS PURPOSES, IS NOT INCARCERATED

THE PROPER RESPONDENTS GENERALLY ARE THE PERSON AND AGENCY IMMEDIATELY RESPONSIBLE FOR SUPERVISING THE PETITIONER AND ASSURING THAT HIS BEHAVIOR CONFORMS TO THOSE RESTRAINTS ON HIS LIBERTY THAT RENDERED HIM IN CUSTODY. IN THIS CASE THAT WOULD BE THE DEPT. OF JUSTICE THROUGH THE ATTORNEY GENERAL AND HIS AGENCY, THE DEPARTMENT OF HOMELAND SECURITY.

IN THE CONTEXT OF DRAWING A PARALLEL BETWEEN A PERSON INCARCERATED AND AN ALIEN AWAITING DEPORTATION, IF A PETITIONER IS ON PROBATION OR PAROLE, THE PROPER RESPONDENTS GENERALLY ARE THE PERSON'S PROBATION OFFICER AND IN THE CASE OF THE ALIEN FACING DEPORTATION, THE DISTRICT DIRECTOR AND THE SUPERVISING AGENCY. REF: ADVISORY COMMITTEE NOTE TO RULE 2 GOVERNING § 2254 CASES ----- SEE: Jones V. Cunningham, 371 US. 236 - 243 --- (1963)

BASED ON THE FOREGOINGS, PETITIONER  
REQUEST ~~OF~~ OF THIS HONORABLE COURT TO  
DISMISS THE GOVERNMENT MOTION TO DISMISS,  
AND REVIEW THE WRIT OF HABEAS CORPUS BASED  
ON FACTUAL AND LEGAL GROUNDS.

RESPECTFULLY SUBMITTED.

ALEXANDER A. OYENUGA

*Alexander A. Oyenu*

A20-750-982.

DATE FEB 23<sup>RD</sup> 2005

## CERTIFICATE OF SERVICE

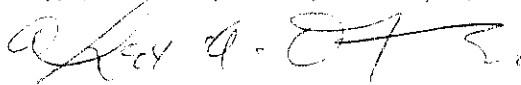
I HEREBY CERTIFY THAT I CAUSE A TRUE  
COPY OF THE ABOVE DOCUMENT TO  
BE SERVED UPON THE

SPECIAL ASSISTANT U.S. ATTORNEY  
FRANK CROWLEY

ADDRESSED AS FOLLOWS:

DEPT. OF HOMELAND SECURITY  
P.O. BOX 8728  
J.F.K. STATION  
BOSTON, MA. 02114

MAILED POSTAGE PREPAID & MAILED 1ST CLASS

ALEXANDER A. CHENUGA  
  
AR0-750-982

DATED: FEB. 23<sup>RD</sup> 2005